IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL APPLICATION NO.764 OF 2004
IN
APPEAL FROM ORDER (STAMP) NO.16438 OF 2004

Pune Municipal Corporation ... Applicant

V/s.

Smt.Pramila Vaman Paranjpe & Anr. ... Respondents

Mr.V.G. Mujumdar for Applicant
Ms.R.Bagwe for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **NOVEMBER 24, 2004**

P.C.:

. This Civil Application has been filed seeking condonation of delay in filing the Appeal from Order. The facts in this case are gross and in my view if the delay is condoned, it would be an imprimatur on the negligence of the public body. The suit filed by the respondents was decreed on 18.5.1991. An appeal was filed by the applicant herein, the Pune Municipal Corporation, within the period of limitation. In 1995, the appeal was dismissed for default. An application was moved soon thereafter by the applicant herein for restoration of the appeal. However, the applicant remained absent and on 3.3.2000, the appeal was dismissed. While dismissing the appeal, the Court has observed that the applicant has been prolonging the

litigation unnecessarily. The appeal was then dismissed on 3.3.2000. For over a period of four years, the applicant has remained in its slumber. It has filed the present Appeal from Order only in June 2004. The reasons for filing these proceedings after four years are stated in the civil application. The removal of the advocate from the panel of advocates appearing for the applicant is mentioned as the principle reason for the delay. Mr.Mujumdar for the applicant candidly states that the advocate was removed by the applicant in 1999 itself and the appeal came to be dismissed in 2000. There is no reason stated in the Civil Application as to why there has been a delay from 2000 to 2004. The only reason which is sought to be urged by him is that after the advocate was removed from the panel, the concerned officers came to know about the dismissal of the appeal only in 2004 and it is then that the decision was taken to file the present Appeal from Order.

2. Mr.Mujumdar submits that he has a good case on merits and therefore, the public body should not be penalised for the negligence of the advocate. He refers to two judgments of the Supreme Court in the case of *N.Balkrishnan v/s. M.Krishnamurthy,* **(1998) 7 SCC 123** and *M.K. Prasad v/s. P. Arumugam,* **(2001) 6 SCC 176.**

3. The application is vehemently opposed by

Ms.Bagwe, appearing for the Respondents. She submits that respondent No.1 is a widow of 82 years of age and and she should not be dragged into this litigation when she has been vigilant ever since the suit was filed in 1986. She submits that no reasons have been stated by the applicant as to why steps were not taken to challenge the order passed in 2000 dismissing the appeal and, therefore, she submits that the Civil Application be rejected.

4. The judgment in the case of *N.Balkrishnan* (supra), was in respect of a case where the delay was of 883 days. The Apex Court found that the delay was as a result of an errant advocate representing the appellant in that case. The appellant before the Apex Court had complained about the conduct of the lawyer representing him before the District Consumer Redressal Forum and had secured compensation. It is in these circumstances that the Supreme Court condoned the delay of 883 days. According to the Supreme Court, the word ‘sufficient cause’ should be construed liberally so as to advance substantial justice and an explanation for the delay is the only criterion and not the length of the delay. The Court has held that in the absence of anything showing malafides or dilatory tactics, the Court should normally condone the delay.

5. In the case of *M.K. Prasad* (supra), the Apex Court considered the case where there was a delay of 554 days. In that case, the advocate for the appellant had withdrawn from the case after the issues were framed, without giving notice to the appellant. The Apex Court found that the delay ought to have been condoned and the appellant could not be held responsible for the delay in the facts and circumstances of that case. The Apex Court found the inconvenience caused to the litigant could be compensated by awarding appropriate exemplary costs when the circumstances warrant; while condoning the delay for sufficient cause.

6. In the present case, the applicant is a public body which has a panel of lawyers attending the Courts. It is difficult to accept the explanation and the reason put forth by the applicant that because one of the advocates was removed from the panel no other advocate could be assigned the work to attend the Court in respect of the appeal. The appeal was dismissed for default in 1995. After being dismissed for default once, the Pune Municipal Corporation, the applicant herein, showed no sense of urgency nor has it taken any steps to see that the application for setting aside the dismissal of the appeal was heard expeditiously. The application for setting aside the dismissal of the appeal again had to be dismissed by the trial Court only

because of the negligence of the Pune Municipal Corporation. The submission of Mr.Mujumdar that in view of the judgments of the Supreme Court, the delay ought to be condoned upon payment of costs cannot be accepted in this case. When a public body such as the Pune Municipal Corporation acts in an absolutely lethargic and negligent manner, in my view, there is no need to condone the delay of over 4 years in filing the present Appeal.

7. Sufficient cause for condoning the delay in filing the Appeal from Order is not spelt out from the pleadings. The advocate attending was removed from the panel by the Pune Municipal Corporation some time in the year 1999. This however, does not explain the delay of 4 years from 3.3.2000 when the appeal was dismissed, till the filing of the present proceedings. Besides this, the conduct of the applicant throughout has been one which exemplifies the dilatory tactics on the part of public bodies. The Respondent No.1 is an old lady of 82 years. To drive her through another round of litigation after many years, only because of the negligence of a public body, would be a travesty of justice. This is not a case where granting of compensation would alleviate the injustice done to her by the dilatory tactics of the applicant.

8. In my view, therefore, there is no need to condone the delay.

9. In these circumstances, Civil Application is dismissed. No order as to costs.